

BANK OF AMERICA, N.A.,)	Case No. 2:16-cv-02211-JCM-NJK
)	
Plaintiff(s),)	ORDER
)	
v.)	(Docket No. 27)
)	
RIDGEVIEW HOMEOWNERS ASSOCIATION,)	
et al.,)	
)	
Defendant(s).)	

I. Motion to Extend Time for Service

II. Motion for Leave to Serve by Publication

Plaintiff seeks leave to serve the Diazes by publication. Service by publication implicates a defendant's fundamental due process rights. *See, e.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *Price v. Dunn*, 787 P.2d 785, 787 (Nev. 1990). As a result, service by publication is generally disfavored. *See, e.g., Trustees of the Nev. Resort Assoc.—Int'l*

1 *Alliance of Theatrical Stage Employees & Moving Picture Machine Operators v. Alumifax, Inc.*,
2 2013 U.S. Dist. Lexis. 106456, *2 (D. Nev. July 29, 2013).

3 The Federal Rules of Civil Procedure provide for service pursuant to the law of the state in
4 which the district court is located, or in which service is made. *See, e.g.*, Fed. R. Civ. P. 4(e)(1).
5 Pursuant to Rule 4 of the Nevada Rules of Civil Procedure, parties are generally required to
6 personally serve summons and the complaint upon defendants. Nevada law also permits a party to
7 obtain leave for service by publication when the opposing party, *inter alia* “cannot, after due
8 diligence be found within the state, or by concealment seeks to avoid the service of summons.” Nev.
9 R. Civ. P. 4(e)(1). There are several factors courts consider to evaluate a party’s due diligence,
10 including the number of attempts made to serve the defendant at his residence and other methods of
11 locating defendants, such as consulting public directories and family members. *See Price*, 787 P.2d
12 at 786-87; *Abreu v. Gilmer*, 985 P.2d 746, 747 (Nev. 1999); *McNair v. Rivera*, 874 P.2d 1240, 1241
13 (Nev. 1994).

14 In this case, Defendant’s process server has made numerous efforts to locate the Diazes, and
15 has only discovered one possible address. *See* Docket No. 27-1. However, it appears that Defendant
16 has not even attempted to serve the Diazes at that address due to its process server’s belief that the
17 address is “chronologically incongruent.” *See, e.g., id.* at 3. Additionally, Defendant submits that
18 its process server submitted inquiries to the United States Postmaster regarding the Diazes’ address,
19 but has not yet received a response. *See, e.g., id.* at 8. However, Defendant does not state when
20 those inquiries were submitted. *See id.* Given the disfavored nature of service by publication and
21 the due process rights involved, the Court finds the efforts identified insufficient to show that service
22 by publication should be allowed at this time.

23 **III. Conclusion**

24 For the reasons discussed above, the Court **GRANTS** in part **and DENIES** in part
25 Defendant’s motion. Docket No. 27. The Court **GRANTS** the motion to the extent that it seeks an
26 extension of the deadline to serve third-party defendants Alex and Sonya Diaz. The deadline to serve
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1 the Diazes is extended by 60 days, until March 13, 2017.¹ The Court **DENIES** the motion without
2 prejudice to the extent that it asks the Court to allow service by publication.

3 IT IS SO ORDERED.

4 DATED: February 13, 2017

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7 NANCY J. KOPPE
8 United States Magistrate Judge
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27 ¹ The Court reminds Defendant that Federal Rule of Civil Procedure 4(m) was amended in
28 Fed. R. Civ. P. 4(m); Docket No. 12.